

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of)	CONSOLIDATED DOCKET NO.
<u>Cable Royalty Funds</u>)	14-CRB-0010-CD/SD
)	(2010-2013)
In the Matter of)	
)	
Distribution of)	
<u>Satellite Royalty Funds</u>)	

**Multigroup Claimants' Response to Order Directing
Parties to Review Calculations of Final Distribution Shares**

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Problematic with the calculations presented by the Licensing Division is that they are provided without editorial explanation, and far from obvious as to the various figures' relationships with each other. Consequently, multiple trial and error calculations were required in order to deduce the relationships amongst figures, certain of which remain unexplained. In some instances, while a consistency of calculations could be discerned, no clarity as to why such calculations exist, or the accuracy of their base reference. In other instances, certain figures simply appear to not add up.

Multigroup Claimants will use the 2010 calculations as an example. At page 2 of Appendix A to the Judges' Order, the starting point is the "Royalty Fees Deposited". When that figure (\$203,349,185.94) is added with other figure appearing on the same horizontal line (\$96,805.02), they equal \$203,445,990.96. Such summed figure corresponds to the entry appearing in the unaudited financial statement for 2010 cable royalties that is presented by the Licensing Division, at page 4 of Appendix A. Similarly, the 2010 figures identified for "Addition(s) to deposits", and "Deduction(s) from deposits" can be deduced to correspond to the Licensing Division's unaudited financial statement. Notwithstanding, the figures that comprise the entries for "Interest/Yield" and "Interest/Yield Reinvested" total \$6,703,000.80,¹ even though the Licensing Division's financial statement reflects "Interest Income" of \$2,510,246.32, and "Gain on matured securities" of \$5,777,105.28, reflecting growth of \$8,287,351.60. Consequently, a discrepancy of \$1,584,350.80 exists for which Multigroup Claimants cannot

¹ The amounts of \$377,185.63, \$744,646.20, \$188,592.82, \$719,788.69, and \$4,672,787.46, equal the sum of \$6,703,000.80 in growth of the principal.

account. Even larger disparities exist throughout each of the Licensing Division's 2011, 2012, and 2013 calculations.

Similarly, while Multigroup Claimants can discern that the Licensing Division appropriately attempted to attribute growth on the principal fund relative to the undistributed royalties for each participant, the aggregate growth figures appearing within the Licensing Division's spreadsheets appears to inexplicably vary. The Licensing Division's spreadsheets attributed each participant with a percentage of the entire royalty pool² then, after an advance distribution was made, created an "Adjusted Percentage" for the participant's interest in the undistributed funds. The Licensing Division then ostensibly applied such Adjusted Percentage to growth occurring after the advance distribution, and added it to the undistributed royalties owing to each participant for each of the royalty categories (i.e., Basic Fund, 3.75% Fund, Syndex Fund). Nevertheless, how the Licensing Division selected the growth figure against which each participant's Adjusted Percentage was applied remains a mystery of calculation.

Again, using the 2010 cable calculations as an example, Multigroup Claimants directs the Judges to the column headed "Adjusted Percentage (%)". See Appendix A, page 2. As the first example in such column, the spreadsheet reflects that the Adjusted Percentage for the Canadian Claimants Group ("CCG") is 8.0050%. Reading horizontally along that entry for the CCG reflects that its share of the Basic Fund on October 25, 2012 was \$8,398,318.11, but that it only received an advance distribution of \$1,653,223.62, leaving a balance of \$6,745,094.49 of undistributed funds, and consequently an "Adjusted Percentage" of 8.0050% of the undistributed funds. By September 25, 2017, the spreadsheet indicates that the CCG's monetary interest had

² Such percentages mirror the percentages set forth at Appendix 3 of the Judges' *Order Directing Calculation of Final Distribution Shares* (Oct. 2, 2020).

grown to \$6,793,399.23, an increase of \$48,304.74. While the figure “\$48,304.74” is not specified in the spreadsheet, it was ostensibly determined by applying the CCG’s Adjusted Percentage of 8.0050% against a specific dollar figure that purportedly reflects the *aggregate* growth of the undistributed funds between October 25, 2012 and September 25, 2012. By dividing the CCG’s Adjusted Percentage against the CCG’s attributed growth, the *aggregate* growth as of September 25, 2017 can be determined to be \$603,432.10 ($\$48,304.74 / .080050 + \$603,432.10$). When this same exercise is applied to the monetary growth attributable to all other 2010 participants, the identical *aggregate* growth figure of \$603,432.10 is reflected for the period ending September 25, 2017.

Notwithstanding, the figure \$603,432.10 appears nowhere in the calculations, and whether looking at the identified “Interest/Yield” accumulated as of September 25, 2017 (\$744,646.20) or the net “Funds Available for Distribution” as of such date (\$793,997.35), no figure seems to explain the lesser amount of aggregate growth relied on by the Licensing Division. Similar exercises reveal comparable disparities throughout each of the Licensing Division’s 2011, 2012, and 2013 calculations.

Two significant problems interfere with the participants’ ability to either confirm or deny the accuracy of the Licensing Division’s calculations. First, presuming that the calculations were performed on something akin to Excel spreadsheets, if such electronic spreadsheets were made available to the parties, the parties could see the commands within the various cells in order to easily ascertain their relationships. As it stands, however, recipients are left to speculate as to such relationships. Second, although providing the participants with the electronic spreadsheets may address and illuminate the relationship between certain calculations and figures, additional information is also necessary that might only be provided by explanation, such as clarifying the

discrepancy between growth funds identified on the Licensing Division's unaudited financial statements, and those identified in the Licensing Division's spreadsheets. Until such information is provided, Multigroup Claimants can neither confirm nor deny the accuracy of the Licensing Division's calculations.

Unfortunately, the Licensing Division has previously been unresponsive to literally scores of overtures for information regarding its calculations. Such was the reason for the *Motion Requesting Order to Compel Release of Information by Licensing Division* filed by Worldwide Subsidy Group LLC ("WSG") on October 1, 2019.³ In the same proceeding, WSG filed an *Emergency Motion for Order to Compel Licensing Division Compliance with January 9 Order, and Final Distribution of Royalties* on March 26, 2020, based on continued failures by the Licensing Division to respond, wherein WSG requested the that Judges direct the Licensing Division to comply with the Judges' January 9, 2020 Order. The former motion was ruled as "moot" by the Judges' (see Order of January 9, 2020), and the latter motion was denied on the grounds that the Judges "do not retain the authority to direct the Licensing Division concerning the manner in which its services are provided or the prioritization of those services within the agency." See Order of April 10, 2020. Notwithstanding, the Judges' *Order Directing Calculation of Final Distribution Shares*, issued in this proceeding on October 2, 2020, expressly directed the Licensing Division to calculate the final distribution shares applicable to this proceeding, a ruling that Multigroup Claimants concurs was squarely within the Judges' authority pursuant to 17 U.S.C. § 801(d).

³ See Docket no. 2008-02 2000-03 (Phase II) (Remand).

CONCLUSION

For the foregoing reasons, Multigroup Claimants responds to the Judges' Order of October 14, 2020 by requesting that the Judges issue a supplemental order directing the Licensing Division to produce all workpapers associated with its calculations, electronic or otherwise, in order to provide transparency to such figures. Moreover, Multigroup Claimants requests that such supplemental order additionally require the Licensing Division to respond to written requests for information regarding its calculations within a defined period of time. Only upon the release of such information can the participants fully understand the Licensing Division's spreadsheets, to which the participants have been asked to affirm or deny the accuracy thereof.

Respectfully submitted,

October 26, 2020

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CERTIFICATE OF SERVICE

I certify that on October 26, 2020, I caused a copy of the foregoing pleading to be served on all parties registered to receive notice by eCRB by filing through the eCRB filing system.

_____/s/_____
Brian D. Boydston, Esq.

Proof of Delivery

I hereby certify that on Monday, October 26, 2020, I provided a true and correct copy of the Multigroup Claimants' Response to Order Directing Parties to Review Calculations of Final Distribution Shares to the following:

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

MPA-Represented Program Suppliers (MPA), represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

Canadian Claimants Group, represented by Lawrence K Satterfield, served via ESERVICE at lksatterfield@satterfield-pllc.com

Public Television Claimants (PTC), represented by Ronald G. Dove Jr., served via ESERVICE at rdove@cov.com

Settling Devotional Claimants (SDC), represented by Matthew J MacLean, served via ESERVICE at matthew.maclean@pillsburylaw.com

Joint Sports Claimants (JSC), represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@apks.com

Signed: /s/ Brian D Boydston